

VZCZCXYZ0001
PP RUEHWEB

DE RUEHKV #2385 2581238
ZNR UUUUU ZZH
P 151238Z SEP 07
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC PRIORITY 3748
INFO RUEAWJA/DEPT OF JUSTICE WASHDC
RUCPDOG/USDOC WASHDC
RUEHMO/AMEMBASSY MOSCOW 0247

UNCLAS KYIV 002385

SIPDIS

SIPDIS

STATE FOR EB/TPP/IPE AND EUR/UMB
STATE PLEASE PASS TO USTR FOR JGROVES/LMOLNAR/PBURKHEAD
USDOC FOR ITA/MAC/OIPR
USDOC FOR 4231/ITA/OEENIS/NISD - CLUCYCK
COMMERCE PLEASE PASS TO USPTO

E.O. 12958: DECL: N/A
TAGS: [ETRD](#) [KIPR](#) [ECON](#) [UP](#)
SUBJECT: UKRAINE: INDUSTRY WINS LANDMARK INTERNET PIRACY CASE
AGAINST MP3.UA

REFS: A) KYIV 1888

- B) KYIV 1780
- C) KYIV 1452
- D) KYIV 348

¶1. Summary: A Ukrainian record company won a court case on September 13 against the infamous Ukrainian music download site mp3.ua. To our knowledge, it is the first time a music company has successfully won a civil case against an online music pirate in a Ukrainian court. The court ruling imposes substantive penalties on mp3.ua. The ruling came as a surprise, as law enforcement officials and many industry reps did not believe the courts would take action against download sites. Police have instead been trying to work through the Internet Service Providers (ISPs). Although the owners of the site will likely appeal the decision, the court's decision could set an important precedent for industry to defend its rights in court, and it validates recent USG efforts to provide IPR training to the courts. End Summary.

¶2. The aptly-named Ukrainian record company Honest Music won a landmark court case on September 13 against internet site www.mp3.ua, considered the largest Ukrainian source of pirated music online. The ruling by Ukraine's High Commercial Court imposes the following penalties on mp3.ua:

-- To stop offering all the tracks from Honest Music's catalogue for downloading;

-- To pay almost USD 75,000 in damages to Honest Music; and

-- To pay a fine of USD 7,500 to the State Budget of Ukraine.

(Note: A representative of Honest Music informed us that a copy of the court decision is not yet publicly available but promised to provide one when possible. End Note.)

¶3. Ignat Berezhny, head of the Ukrainian Music Industry Association, an IFPI-affiliated umbrella organization that includes Honest Music as well as most large international labels, cautioned Econoff on September 14 that he expected mp3.ua to appeal the decision. Should Honest Music win the appeal, however, industry will then seek to use the case as a precedent to broaden the action against mp3.ua to include other rights holders, said Berezhny.

¶4. Econoff had discussed GOU efforts to combat internet piracy with Serhiy Lebid, head of the Ministry of Interior's IPR Department, on August 29, before the court ruling. Lebid restated that the GOU's preferred method to shut down illegal sites was to work through

Internet Service Providers (ISPs), as he felt law enforcement lacked the necessary authority to go through the courts (refs A and D). Private sector companies have been equally doubtful of their chances of success against online pirates in Ukraine's civil courts. Econoff passed to Lebid ISP information from USG agencies and industry on mp3.ua and mp3stor.com, another suspected Ukrainian pirate site. (Note: Post also passed this information to Embassy Moscow, as experts believe the servers hosting mp3.ua are located in Russia. End note.) Lebid appreciated the information and promised a thorough investigation of both sites.

Comment: An Anti-Piracy Turning Point?

15. This court decision, if held up on appeal, could mark a major turning point in the fight against online piracy in Ukraine. Mp3.ua has built up a huge repertoire of nearly 32,000 artists, developed a large Ukrainian user base, and seemed able to operate with impunity. Ministry of Interior efforts to shut down the site appeared to be going slowly, and the courts appeared unable to act. The High Commercial Court's ruling may finally set the precedent for rights holders to successfully use Ukrainian courts to defend their IP rights from illegal online use. It also validates our recent efforts to expand USG-sponsored IPR training for Ukrainian courts, and the High Commercial Court in particular (refs B-C).

TAYLOR